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OFFICE OF PETITIONS

BAUSCH & LOMB, INC.
ONE BAUSCH & LOMB PLACE
ROCHESTER, NY 14604--270

In re Application of :
Bartels, et al. :
Reissue Application No. 09/816,284 : DECISION REFUSING STATUS
Filed: March 23, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No.: P02930 :
For: NUTRITIONAL SUPPLEMENT TO :
TREAT MACULAR DEGENERATION :

This is in response to the petition under 37 CFR 1.47(a), filed October 15, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 23, 2001 without an executed oath or declaration and naming Stephen Paul Bartels, Cara Lorraine Baustian, George Edwin Bunce, Leon Ellenbogen, Frederick L. Ferris, Jin Kinoshita, James Cecil Smith, and David A. Souerwine as joint inventors. Accordingly, on June 11, 2001, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed, requiring an executed oath or declaration, and a surcharge for its late filing. The instant petition was filed in response.

Applicant was given two (2) months to respond to the Notice, making a response due on or before August 11, 2001. As the Certificate of Mailing accompanying the instant petition indicates that the petition was deposited on October 11, 2001, petitioner requires a two (2) month extension of time. Deposit account 02-1425 as been charged a two (2) month extension of time fee in the amount of \$400.00.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) set forth above. The petition lacks supporting evidence that the non-signing inventor cannot be

reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration has not been presented.

The petition states that inventor Jin Kinoshita "was contacted by telephone on both September 14, 2001 and September 20, 2001 regarding his execution of a Declaration of Inventorship" and that "on both occasions Dr. Kinoshita stated his refusal to sign a Declaration of Inventorship and join in the subject application."

Petitioner is reminded that "before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney." See, MPEP 409.03(d).

Evidence that the non-signing inventor was presented with a copy of the application papers (specification, claims and drawings), and, having been presented with the application papers thereafter refused to sign the oath or declaration, is required. Further proof of the pertinent events should be made by someone having first hand knowledge of the events in the form of an affidavit or declaration. In particular, the affidavit or declaration must set forth the manner in which the application papers were presented to the non-signing inventor. Petitioner should include copies of dated cover letters and/or mailing receipts as evidence that the non-signing inventor was presented with a copy of the application papers or having been presented with the application papers, refused to sign the oath or declaration. If oral refusals were made after such time as the non-signing inventor was presented with the application papers, that fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusals were made. If written refusals were made after such time as the inventor was presented with the application papers, petitioner should supply evidence of such written refusals in any renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

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Telephone inquiries related to this decision may be directed to
Petitions Attorney Alesia M. Brown at (703) 305-0310.

A handwritten signature in cursive script, appearing to read "Beverly M. Flanagan".

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy